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FILED
DISTRICT COURT OF GUAM

OCT 29 2004

MARY L. M. MORAN
CLERK OF COURT

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UNITED STATES DISTRICT COURT
TERRITORY OF GUAM

JAY MERRILL, on his own behalf and on behalf of all other similarly situated voters desirous of casting a vote in favor of Proposal A at a fair and legal election,

Plaintiffs,

v.

THE GUAM ELECTION COMMISSION; GERALD A. TAITANO, in his individual capacity and in his capacity as Executive Director of the Guam Election Commission; I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN (The 27th Guam Legislature); FELIX P. CAMACHO, in his official capacity as the Governor of Guam,

Defendants.

CIVIL CASE NO. CV-04-00046

ORDER

Before the Court is an Amended Stipulation and Proposed Order for Preliminary Injunction signed by Thomas L. Roberts, Esq., attorney for plaintiff and Robert M. Weinberg, Asst. Attorney General, purportedly on behalf of all defendants in this case. For the following reasons, the Court will not accept the stipulation and instead will stay the matter pending the November 2, 2004 election day.

BACKGROUND

On October 25, 2004, plaintiff filed this action in the Superior Court of Guam against the Guam Election Commission, Gerald Taitano in his individual and official capacity as Executive Director of the Guam Election Commission, the Legislature of Guam and Felix P. Camacho in his official capacity as the Governor of Guam. Claiming that the Guam Election Commission's actions violated federal constitutional law via 42 U.S.C. § 1983 as well as Guam statutory law, plaintiff sought,

1. An immediate pre-election judicial declaration on (a) the legal efficiency of the
2. Proposal A ballot pamphlets mailed to the voters by the Directors and the
3. Guam Election Commission, (b) an immediate, pre-election judicial
declaration on whether the results of any vote on Proposal A on November 2,
4. 2004 will be invalid as a result of (i) the ballot pamphlets mailed to the voters,
and/or (ii) as a result of the mass public uncertainty caused by the Attorney
General's opinion.
5. For a preliminary and permanent injunction (a) enjoining the scheduled
6. November 2, 2004 vote on Proposal A, (b) compelling the Director and the
7. Election Commission to remove the Proposal A ballots from the polling places
on November 2, 2004, and (c) enjoining the Director and the Election
Commission from tabulating any absentee votes cast on Proposal A.
8. For an order compelling the Governor to call for a special election on Proposal
9. A pursuant to 3 G.C.A. § 13103, or an order compelling the Legislature to call
10. for a special election on Proposal A pursuant to 3 G.C.A. § 17203, or an order
compelling the Election Commission to schedule and hold a special election
on Proposal A, to be held not later than sixty (60) days after the date of the
court's order...

11 Asserting the existence of federal question subject matter jurisdiction, the Attorney General
12 of Guam removed the case to this Court on October 26, 2004. On October 28, 2004, plaintiff and the
13 Attorney General of Guam ("AG") filed the Amended Stipulation and Proposed Order for Preliminary
14 Injunction now before the Court. In the Stipulation, the plaintiff and AG agreed that the Guam
15 Election Commission violated Guam law and the United States Constitution. Counsel further agreed
16 that, as a result of the Guam Election Commissions' failures, Proposal A was invalid. Finally,
17 plaintiff and the AG agreed that the Guam Election Commission was preliminarily enjoined from
18 counting and tabulating the votes for and against Proposal A. Subsequent to the filing of the
19 Stipulation, the Guam Legislature and Governor Camacho filed objections to the Stipulation. Further,
20 it has come to the attention of Court that the Legislature has passed, and the Governor has signed into
21 law on October 27, 2004, Bill 374, a bill apparently meant to remedy any defects surrounding Proposal
22 A.

23 DISCUSSION

24 1. There now appears to be a controversy as to whether the AG represents the defendants in this case.
25 In the Notice of Removal, the AG claims that it represents all defendants in this case. Nevertheless,
26 separate attorneys have entered appearances on behalf of the Legislature and the Governor.
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1 Furthermore, the Legislature and the Governor filed objections to the stipulation. It seems
2 inappropriate to bind the Government of Guam to a stipulation and order where it appears that the AG
3 may not be the government's counsel. Accordingly, the Court will not accept the stipulation.

4 2. The Court will not grant a preliminary injunction and will also *sua sponte* stay this action pending
5 the November 2, 2004 election results.

6 a. The probability of success for plaintiff has become less clear with the passage of Bill 347.
7 Moreover, plaintiff will not suffer irreparable harm. Plaintiff will still be able to litigate the
8 validity of Proposal A and possibly compel the government to conduct another election.

9 b. The balance of harms also weighs in favor of not granting a preliminary injunction and
10 staying this action pending the November 2, 2004 election results. If Proposal A passes, then
11 this whole action becomes moot. If Proposal A fails, plaintiff still has an opportunity to test
12 the lawfulness of Proposal A's electoral process. If the process is lawful, then Guam saves the
13 expense of conducting another election. If found unlawful, then another election is conducted
14 and plaintiff is exactly where he always wanted to be.

15 c. Not granting a preliminary injunction and staying the action pending the November 2, 2004
16 election results will also be in the public interest. This is a matter of deep public concern.
17 Much time, money and effort has been put into this election by all citizens on both sides of the
18 issue. It is always in the public interest for the citizenry to have their say on an important
19 matter such as Proposal A.

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CONCLUSION

Based on foregoing, it is **ORDERED** that Amended Stipulation and Proposed Order for Preliminary Injunction filed on October 28, 2004 is **DENIED**. It is further **ORDERED** that this matter is stayed pending the November 2, 2004 election results.

DATED this 29 day of October, 2004

Alex R. Munson
Designated Judge, United States District Court